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Order 2002-3-23



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

**Issued by the Department of Transportation  
on the twenty-fifth day of March, 2002**

**Site59.com, Incorporated**

**Violations of 49 U.S.C. § 41712 and 14 CFR  
399.84**

**Served March 25, 2002**

**CONSENT ORDER**

This consent order concerns advertisements by Site59.com, Inc. ("Site59"), that violate the advertising requirements specified in Part 399 of the Department's regulations (14 CFR Part 399), and constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712. This order directs Site59 to cease and desist from future violations and to pay compromise civil penalties.

Site59, as a seller of air travel, is subject to the advertising requirements of Part 399 of the Department's rules. Under 14 CFR 399.84, any advertising that states a price for air transportation is considered to be an unfair or deceptive practice in violation of 49 U.S.C. § 41712 unless the price stated is the entire price to be paid by the customer to the air carrier or ticket agent for such air transportation, tour or tour component. However, as a matter of enforcement policy, the Department has permitted air carriers and agents to state separately from the advertised price taxes and fees, imposed or approved by a government on a per-passenger basis, such as passenger facility charges, so long as their amounts appear or are stated in the advertisement.<sup>1</sup> Taxes and fees imposed on

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<sup>1</sup> See, e.g., Order 97-11-14. See also Order 2001-12-7, an exemption permitting an Internet travel agent to list service fees separately from the airfare so long as the agent implements certain consumer protection safeguards.

an *ad valorem* basis, however, must be included in the advertised fare, lest consumers be seriously confused about the total amount that must be paid.

Site59 specializes in offering last minute weekend travel packages that include airfare, hotel and/or rental car. During 2001, Site59 promoted air travel packages by means of advertisements that were published over the Internet (Site59.com and other sites) and through internet-based subscriptions. One such advertisement appeared on July 18, 2001, offering "Site59 Top Picks / Dynamite Savings — Take \$25 off" weekend travel packages including hotel and airfare, describing five destinations from Washington, D.C., valid from July 18 through July 31, 2001. Another such promotion that was repeatedly published was the "Las Vegas, NV: More Than Wayne Newton" package. Both publications held out prices without mention of any applicable taxes or fees that would be added when the tickets were purchased. When, however, passengers attempted to purchase the advertised getaway package from Washington Dulles Airport to Las Vegas, for example, they were told that the fare was actually \$62.16 higher than the quoted fare, because the advertised fare did not include all of the applicable fees and charges.<sup>2</sup> As published, the Site59 advertisements violate section 399.84 of the Department's regulations and 49 U.S.C. § 41712.

In mitigation, Site59 states that it has always striven to comply with all Department laws and policies. According to Site59, it never intended to mislead customers concerning the pricing of its travel packages. Before the company was contacted by the Department, Site59 notes that, by adding the phrase "+tax" to its advertisements, it took steps to disclose that certain government fees and taxes are added to the initial advertised price when the customer actually purchases a travel package. When other noncompliance was pointed out by the Department, Site59 states that it was swiftly remedied, and that, for these reasons, any consumer harm caused by the non-complying advertisements at issue here was limited.

The company states, moreover, that it is a relatively new entrant to the online travel market, with substantially fewer resources, customers and employees than other major online travel businesses or major air carriers. As a newer entrant into the online travel business, Site59 recounts that its business has been particularly affected negatively by the decline in air travel following the tragic events of September 11, 2001. Finally, Site59 notes that its success is heavily dependent upon consumer trust and goodwill, and that it takes its commitment to accurate advertising seriously. Site59 states that it has refined its approach to advertising in order to assure that in the future it will provide the most accurate and complete information on its innovative travel packages to its customers and the public.

The Enforcement Office has carefully considered all of the information provided by Site59.com, Inc. and the corrective measures it has adopted, but continues to believe that enforcement action is warranted. In this connection, the

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<sup>2</sup> Initially, most package prices were published with no mention of additional fees or taxes. Later, the advertisements included the phrase "+ tax" next to some advertised fares.

Enforcement Office and Site59.com, Inc. have reached a settlement of this matter. Site59.com, Inc. consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and of 14 CFR 399.84, and to the assessment of \$40,000 in compromise of potential civil penalties. Of this penalty amount, \$20,000 will be offset by the expenses Site59.com, Inc. has incurred in bringing its operations, web site and subscription service into compliance with the Department's statutes and regulations; these expenses were supported by cost records provided to the Enforcement Office. Another \$10,000 of the penalty amount shall be due and payable within 15 days of the issuance of this order. The remaining \$10,000 shall be suspended for one year from the date of issuance of this order, and then forgiven unless Site59.com, Inc. violates this order's cease and desist provision during that time period or fails to comply with the order's payment provisions, in which case the unpaid portion of the penalty shall become due and payable immediately. We believe that this compromise assessment is appropriate and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's advertising requirements by Site59.com, Inc. as well as by airlines, travel agents, and other sellers of air transportation.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Site59.com, Inc. violated 14 CFR 399.84 by causing to be published advertisements that failed to state the entire price to be paid by the passenger to the carrier for certain air transportation;
3. We find that by engaging in the conduct and violations described in paragraph 2 above, Site59.com, Inc. also violated 49 U.S.C. § 41712;
4. Site59.com, Inc., and all other entities owned and controlled by, or under common ownership and control with Site59.com, Inc., and their successors and assignees, are ordered to cease and desist from future violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
5. Site59.com, Inc. is assessed \$40,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Of this penalty amount, \$20,000 shall be offset by the expenses Site59.com, Inc. has incurred in bringing its operations, web site and subscription service into compliance with the Department's statutes and regulations; these expenses were supported by cost records provided to the

Enforcement Office. Another \$10,000 of the penalty amount shall be due and payable within 15 days of the issuance of this order. The remaining \$10,000 shall be suspended for one year from the date of issuance of this order, and then forgiven unless Site59.com, Inc. violates this order's cease and desist provisions during that time period or fails to comply with the order's payment provisions, in which case the unpaid portion of the penalty shall become due and payable immediately. Failure to pay the compromise assessment as ordered will subject Site59.com, Inc. to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order; and

6. Payment shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to this order.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

ROSALIND A. KNAPP  
Deputy General Counsel

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